

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1463/2002

Date of decision 14.5.2007

H.P. State Forest Corporation & another.

...Petitioner.

Versus

Kusal Singh and others

...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹. Yes.

For the petitioners Mr. Neel Kamal Sood, Advocate.

For the respondents None.

Rajiv Sharma, J. (Oral)

This petition is directed against the award passed by the H.P. Labour Court, Shimla on 16.1.2002

The necessary facts for the adjudication of this petition are that the petitioners-corporation had entered into an agreement with respondent No.16 on 29th July, 1995 for felling, conversion and carriage to road side depot, Khudan and stacking of 805.314 M3 converted timber. The copy of the agreement was supplied to the Court during the course of hearing, which is taken on record. The relevant paras of the agreement necessary for the adjudication of this petition are reproduced below:

“14. That the Contractor(s)/Labour Supply Mate(s) will maintain a roll call register to mark daily attendance of the Labour force present on the works and would produce the

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* Yes.

same on demand to the Divisional Manager of the Official
incharges of the work, as and when required to do so.

24. That the Divisional Manager shall be entitled to pay the
labour from the unpaid bill (bills(of the Contractor(s) Labour
Supply Mate(s) in the event of the Contractor(s) /Labour
Supply Mate(s) failure to pay the same. If there are no such
dues/unpaid bills, the Divisional Manager shall not be liable to
make any payment to labour.

30. That the Contractor(s)/Labour Supply Mate(s) shall also be
bound to obtain licence under the Contract Labour
(Registration and Abolition) Act, 1970 and H.P. Contract
Labour (Regulation and Abolition) Rules, 1974 to comply with
the same in letter and spirit.”

The workmen were engaged by the respondent No.16 and they
have completed the work within the prescribed period i.e. 3.11.1996 to
30.1.1997. The workmen's wages for the period with effect from
3.11.1996 to 30.1.1997 were neither paid by the petitioners-corporation
nor by the respondent No.16. The total payment of the respondents No.1
to 15 was amounting to Rs. 15,927.50 paisa. The respondents No.1 to 15
(hereinafter referred to as the workmen) have filed claim petition under
section 33-C (2) of the Industrial Disputes Act, 1947 before the H.P.
Industrial Tribunal-cum-Labour Court at Shimla. The petitioners-
corporation has filed the reply to the claim petition vide Annexure P-3. It is
admitted in para 1 of the reply by the petitioners that respondent No.16
was allotted work of lot No.3/95-96 for felling, conversion and carriage to
road side depot, Khudan and stacking of 805.314 M3 converted timber.
The main stand of the petitioners-corporation before the Labour Court was

that it was the respondent No.16, who was to make the payment of the wages to the workmen.

The Labour Court vide award dated 16.1.2002 held the workmen entitled to the amount as claimed from the respondents jointly and severally with interest @ 6% from the date of petition. The Labour Court has categorically come to the conclusion that in the absence of the contractor, it is the Forest Corporation, who was liable to make the payment though they could recover this amount from the contractor.

Mr. Neel Kamal Sood, Advocate appearing on behalf of petitioners-corporation has strenuously argued that the workmen could not approach the Labour Court under section 33-C (2) of the Industrial Disputes Act, 1947 and they were required to approach the authorities as constituted under the Payment of Wages Act, 1936. Mr. Sood has drawn the attention of this Court to Annexure P-15 whereby the Inspector has been appointed to settle the disputes under the Payment of Wages Act, 1936. He has further argued that the principal employer i.e. Forest Corporation was not liable to pay the wages of the workmen if the same have not been paid by the contractor i.e. respondent No.16.

Respondents though served have not appeared before this Court and as such were proceeded exparte by this Court on 30.4.2004.

I have heard the parties and perused the record.

The main plea raised by Mr. Neel Kamal Sood, Advocate for the petitioners-corporation that the workmen should have approached the authorities appointed under the Payment of Wages Act, 1936, has not been taken before the H.P. Labour Court, Shimla. This plea has been raised for the first time in this Court.

This question whether the Labour Court's jurisdiction under section 33-C(2) of the Industrial Disputes Act, 1947 is excluded by the provisions of the Payment of Wages Act, 1936 is no more res integra.

The Hon'ble Punjab and Haryana High Court has held in **Inder Singh Vs. Labour Court, Jullundur**, 1969 (Labour Industrial Cases) 1126 that neither section 24 of the Minimum Wages Act, 1948 nor section 22 of the Payment of Wages Act, 1936 bars the jurisdiction of the Labour Court to entertain and adjudicate upon the application under section 33-C (2) of the Act. Their Lordships of Hon'ble the Punjab and Haryana High Court have held as under:

“The law laid down in the above- mentioned cases clearly indicates that neither Section 22 of the 1936 Act nor Section 24 of the Wages Act bars the jurisdiction of a Labour Court to entertain and adjudicate upon an application under Section 33C (2) of the Act. The Labour Court is a judicial or at least a quasi-judicial Tribunal but not a Civil Court and the jurisdiction of the Labour Court not having been barred by the express provision of either Section 22 of the 1936 Act or Section 24 of the Wages Act, it is, against the well- settled canons of interpretation of statutes to imply any such bar to the jurisdiction of the Labour Court which is not created by any statute. Mr. Bhagirath Dass referred to the Division Bench judgment of the Madhya Pradesh High Court in Laxman v. Dayalal Meghji & Co., 1968-1 Lab LJ 139=(AIR 1967 Madh Pra 155), wherein it was held' that the Labour Court was right in holding "that it had no jurisdiction to entertain all, employee's application under Section 33C (2) for recovery of the difference in wages actually paid and the wages paid under the Madhya Pradesh Minimum Wages Fixation Act, 1962. With the greatest respect the learned Judges of the Madhya Pradesh High Court, I am inclined to think that the observations of the Bench in Laxman's case, 1968-1 Lab LJ.139=(AIR 1967 Madh Pra 155) (supra) go (contrary to the decision of the Supreme Court in Ambica Mills case, 1961-1 Lab LJ 1=(AIR 1961 SC 970) (supra),

and to the trend of judicial precedents on the point in question. In deciding the case of Laxman in the way the Madhya Pradesh High Court did, they followed their own earlier Division Bench judgment which was contrary to the view of the Punjab High Court. The only other case to which Mr. Bhagirath Dass referred on this point is the judgment of the Bombay High Court in Savatram Ramprasad Mills Co. Ltd., Akola v. Baliram Ukandaji, AIR 1963 Bombay 189. It may be noticed that the observations of the Bombay High Court in the aforesaid case were not approved by the Supreme Court in the Central Bank of India case, AIR 1964 SC 743 (supra). The Labour Court appears to have gone entirely wrong in holding that though there was no statutory bar to the jurisdiction vested in the Labour Court by Section 33C (2) of the Act, some kind of implied bar on general principles could be created in the way of the petitioners. Error of law in the decision of the Labour Court on the second preliminary issue is, therefore, equally obvious, and the said decision is also set aside.”

The Hon'ble High Court of Mysore, in **B. Narasimha Pai v. Damodara Bhat**, 1971 (1) Labour Law Journal 452 has held that section 15 of the Payment of Wages Act does not take away the power vested in Labour Court by virtue of section 33 C (2) of the Industrial Disputes Act, 1947. Their Lordships of Hon'ble High Court, Mysore have held as under:

“Shri Shivaramaiah, the learned Counsel for the first respondent, supports the second respondent's order on a ground different from that which has been set out in the impugned order. The first respondent's contention is that in view of S. 15 of the Payment of Wages Act, the authority that can entertain the petitioner's application is the authority appointed under that section. He points out that in exercise of powers under the aforesaid section, the State has appointed the District Magistrate, South Kanara District as the authority for South Kanara District. He also points out that the Payment of Wages Act being a special enactment and the jurisdiction having been vested in the District Magistrate, South Kanara, the Labour Court viz., the second respondent, cannot entertain

any petition which comes under the provisions of S. 15 of the Payment of Wages Act, 1936. It is seen that under S. 22 of the said Act, bar of suits has been provided. Section 22 reads as follows:

"No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed-

- (a) forms the subject of an application under S. 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under S. 17; or
- (b) has formed the subject of a direction under S. 15 in favour of the plaintiff; or
- (c) has been adjudged, in any proceeding under S. 15, not to be owed to the plaintiff; or
- (d) could have been recovered by an application under S. 15."

"It is significant that the Payment of Wages Act, 1936 while providing for bar of suits does not provide for bar of proceedings under S. 33C(2) of the Industrial Disputes Act, 1947. Section 33 C(2) of the Industrial Disputes Act, 1947 provides for determination of the benefit in terms of money in very wide terms which as follows :

"33 C(2)-Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under the Act, be determined by such Labour Court as may be specified in this behalf by the appropriate Government, and the amount so determined may be recovered as provided for in sub-s. (1).."

Under this provision, the Labour Court is entitled to decide any claim made by the workman to receive from the employer any benefit which is capable of being computed in terms of money. It appears to us that S. 15 of the Payment of Wages Act, 1936 does not take away the powers vested in the Labour Court by virtue of S. 33C (2) of the Industrial Disputes Act, 1947. It was pointed out that under the Payment of Wages Act

1936, a definite period of limitation is prescribed for making claims under it. The period prescribed is 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be. For a claim to be made under the provision of S. 33 C(2) of the Industrial Disputes Act, 1947, no period of limitation is prescribed. Therefore, it is contended that the claim which is time barred under the provisions of S. 15 of the Payment of Wages Act, 1936, should not be entertained by the Labour Court on an application filed under S. 33 C (2) of the Industrial Disputes Act, 1947. Two questions arise in this connection. The first question is whether what is claimed by the petitioner comes within the meaning of wages as defined in the Payment of Wages Act, 1936. This question has not been considered by the first respondent. The 2nd question is whether any claim made under S. 33 C (2) of the Industrial Disputes Act, 1947, is barred by limitation. If the claim is barred under S. 15 of the Payment of Wages Act, 1936, an application under that section cannot be entertained, and this does not preclude a claim being made under S. 33 C (2) of the Industrial Disputes Act, 1947, if the claim is made within a reasonable time. The principles that apply for raising an industrial dispute under the Industrial Disputes Act, in so far as the belatedness or otherwise of the claims, would apply to a claim made under S. 33 C (2) of that Act. This aspect came up for consideration before the Gujarat High Court in *Ambika Mills Ltd. v. Second Labour Court* [1967-II L.L.J.800 (Guj.)]. One of the contentions raised in that case was that the applications were filed for recovering the wages and the remedy was to proceed under the provision of S. 15 of the Payment of Wages Act. The provisions of sub-s. (2) of S. 33 C of the Industrial Disputes Act, being of a general nature and the provisions of S. 15 of the Payment, of Wages Act, being in the special Act, it overrides the provisions of sub-s. (2) of S. 33(C) of the Industrial Disputes Act, and, therefore, the only remedy for the aggrieved workman was to make an application under S.15 of the Payment of Wages Act and applications under sub-s.(2) of So 33C were not maintainable. Dealing with

these questions, the Gujarat High Court observes as hereunder :

"The right of the worker to recover the amount due to him can be enforced either by following the remedy under S. 15 of the Payment of Wages Act or under the provisions of S. 33 C (2) of the Industrial Disputes Act. These remedies are in the alternative and are independent of each other.

It is true that the Payment of Wages Act does provide for a limitation but that period of limitation applies only to the procedure provided by the Payment of Wages Act. The legislature has not provided any limitation for the remedy under S. 33 C (2) of the Act. The remedy to recover the amount due under S. 33 C is an independent remedy".

Thus it appears to us that the second respondent has jurisdiction to entertain the petitioner's application and therefore the order rejecting the application is not sustainable in law."

The Division Bench of the Hon'ble Bombay High Court has held in Union of India Vs. Samuel Peters, 1975 (II) Labour Law Journal 185 has held as under:

"It is then urged, though for the first time, by the learned counsel for the petitioner that the claim which the respondent No.1 made under S. 33C (2) of the Industrial Disputes Act could properly be made before the Payment of Wages Authority under the Payment of wages Act and in fact it was so made by respondent No.1 and in view of this Special Act, such as the Payment of Wages Act, the general provisions of S.33 C (2) of the Industrial Disputes Act would not be applicable to the respondent No. 1 and the jurisdiction of the Industrial Court under S. 33C (2) of the Act would be barred. There cannot be any dispute that the claim, as in the present case in the absence of anything could be made under the Payment of Wages Act as well as under S. 33C (2) of the Industrial Disputes Act. It is, however, contended by Mr. Palshikar that since this claim could be made under the Payment of Wages

Act, which is a Special Act, the jurisdiction of the Industrial Court under S. 33C (2) in respect of such a claim is barred by necessary implication. There is no provision in the Payment of Wages Act excluding the jurisdiction of the Industrial Court under S. 33C (2) and, therefore, the contention is raised that by necessary implication such a jurisdiction is barred. In fact, in S. 22 of the Payment of Wages Act a specific provision has been made to exclude the jurisdiction of civil Court from entertaining a claim which could be made under the Payment of Wages Act. It was intended to exclude the jurisdiction also of the Industrial Court under S. 33C (2) a similar provision could have been made in respect of this also. When a specific provision has been made expressly barring the jurisdiction of some Courts there is no scope of any implication in respect of other Courts. We are, therefore, not in a position to accept the contention of Mr. Palshikar that the jurisdiction of the Industrial Court is barred by necessary implication since there is a provision for determination of such claims under the Payment of Wage's Act. This question in fact is also no longer open and has been decided by the several decisions of High Courts including this High Court. There is also a decision of the Supreme Court so far as the Minimum Wages Act is concerned. The Minimum Wages Act contains similar provisions to those of the Payment of Wages Act and the principles laid down in the decisions which considered the provisions of S. 33C (2) of the Industrial Disputes Act, the Payment of Wages Act and the provisions of the Minimum Wages Act, would apply in the instant case also: See: *Balaram Abaji v. M. C. Raghojiwalla*. A.I.R. 1961 Bom.. 59; *M/s Ambica Tobacco, Gondia V. Labour Court, Nagpur*, (1968) Mh. L.J. 10, *Ambica Mills Ltd. Ahmedabad V. 2nd Labour Court*, [1967-II LLJ 800], *Lal and Company V. R.N. Kulkarni* [1968-II LLJ 518] and *Indersingh v. Labour Court*, AIR 1969 P. &H.310.

The Hon'ble High Court of Madras, in *R.K. Reddiar V. Labour Court, Madurai*, 1976 (2) Labour Law Journal 218 has held as under:

“On that view of the matter, we considered that such a computation is competent only under S. 33C (2) of the

Industrial Disputes Act. That provision is wide enough to cover that relief and in our opinion, there is nothing in common between the scope of S. 15 of the Payment of Wages Act and that of S. 33C (2) of the Industrial Disputes Act Where jurisdiction is concurrent under different provisions in different enactments and the jurisdiction under one of those provisions is general and is of a larger scope, it may be possible to take the view that the general and wider jurisdiction should yield place to the special jurisdiction and that only after exhausting the latter, the general jurisdiction can be resorted. Equally, it may be said that, since the jurisdiction is concurrent, there is no legal bar to the wider jurisdiction being invoked without resorting to the special jurisdiction. But this aspect of the matter does not arise for our consideration in these cases, as we are of opinion that the scope of S. 15 of the Payment of Wages Act and that of S. 33C (2) of the Industrial Disputes Act are not concurrent, but different the former being confined only to the, two limited reliefs, which we have indicated. On that view, ,it would follow that Ismail, J. came to the correct conclusion.

“Our attention has, however , been invited to some of the decided cases, which we shall briefly notice. For the appellants, reference has been made to Laxman v. Dayatal Meghji & Co.,[1968-I L.L.J 139]; A.I.R. 1967 M.P. 155, and Lakshmi Mills Co; Ltd. V. Labour Court, [1962-I L.L.J. 493]; A.I.R. 1962 Madras, 385, decided by one of us. The first of them held that the Labour Court had no jurisdiction to entertain an application under S.33C (2) of the Industrial Disputes Act for recovery of the difference wages actually paid and the wages payable under the Madhya Pradesh Minimum Wages Fixation Act, 1962. A Division Bench there was of the opinion that there was no indication whatever either in S. 33C(2) of the Industrial Disputes Act or in S. 15 of the Payment of Wages Act or in the Supreme Court decision in Central Blank of India 'V'. Rajagopalan, [1963-II L.L.J. 89]; A.I.R. 1964 S.C. 743, that the scope of S. 33C (2) was wide enough to include claims under S. 2 (vi) and 15 of the Payment of Wages Act. But this view of the Madhya Pradesh High Court was based on its construction

of sub-s. (1) of S. 33C of the Industrial Disputes Act and in the light of it, of the scope, of sub-s. (2) of that section. Though *Lakshmi Mills Co. Ltd. v. Labour Court* (supra) took somewhat such view we do not think that that view can be sustained in view of the later decisions of the Supreme Court, as for instance in *Central Bank of India v. Rajagopalan*, (supra). There the Supreme court specifically held that since sub-s. (2) of S. 33C has not repeated the words of limitation in sub-s. (1) the scope of sub-s. (2) must be held to be wider than that of sub-s. (1).

On the above view of the matter, we are inclined to think that since the jurisdiction under S. 33C (2) of the Industrial Disputes Act is not concurrent, but they are different 'in their nature and scope, it was competent for the Presiding Officer, Labour Court, to entertain the applications for computation of the allowances in terms of money and proceed under sub-s. (2) of that section. Accordingly, Writ Appeals Nos. 249 and 336 of 1970 as well as Writ Appeal No.95 of 1971 are dismissed, but with no costs. We may record that so far as respondents 1, 4 and 5 in Writ Appeal No.95 of 1971 are concerned, they do not press their claim."

Similarly, the Full Bench of the Hon'ble Madhya Pradesh High Court in *Mohd. Ismail V. Central Govt; Industrial Tribunal*, 1980 LAB.I.C. 112 has held as under:

"However the Division Bench decision of this Court in *Laxman Tulsiram v. Dayalal Meghji & Co.* (Supra) is the solitary decision which has taken a contrary view and has held that in view of Section 22 of the Payment of Wages Act a claim could be entertained under Sections 2 (vi) and 15 of the Payment of Wages Act and not under S. 33-C (2) of the Industrial Disputes Act. This has been followed by another Division Bench decision in *Managing Director, N. C. D. C. Ltd. v. G.C. Agarwal* (Supra). With great respect we express our doubt about the correctness of the decision in *Laxman Tulsiram v. Dayalal Meghji & Co.* (Supra). The Supreme Court in *Shri Ambika Mills & Co. v. S. B. Bhatt* (Supra) has only said that the matters which lie within the jurisdiction of the

authority under the Payment of Wages Act are excluded from the jurisdiction of the ordinary civil Courts i. e. claims arising out of deduction Or delay in payment of wages. The jurisdiction conferred on the authority is limited by section 15 and it is excluded as prescribed by Section 22 i. e. there is bar of civil suit only, and the provision cannot be read as to debar Labour Court under Section 33-C (2) from entertaining such claim. The Supreme Court in *Central Bank of India v. Rajgopalan* (Supra) also clearly mentioned that an application Under Section 33-C (2) may also include a claim which is not based on settlement, award or made under the provisions of Chapter V-A as mentioned in Section 33-C (1). The Supreme Court in *Bombay Gas Co. v. Gopal Bhiva* (Supra) has upheld that order of the Labour Court allowing a similar claim under Section 33-C (2) although such a claim was barred Under Section 15 of the Payment of Wages Act there being a limitation of one year under that Act but the claim was preferred after 8 years. Therefore, it is clear that the decision of the Division Bench of this Court in *Laxman Tulsiram v. Dayalal Meghji & Co.* (Supra) is not only contrary to the trend of judicial decisions on the point in question but it also goes contrary to the decisions of the Supreme Court in cases mentioned above. Accordingly, we overrule the decisions of this Court in *Laxman Tulsiram v. Dayalal Meghji & Co.* (AIR 1967 Madh Pra 155) and *Managing 'Director, National Coal Development Corporation Ltd. v. G. C. Agarwal* M. P. No.133 of 1970 decided on 8-1-1970.

We, therefore, answer the question in the negative by saying that an application under S. 33-C (2) of the Industrial Disputes Act, 1947, is not barred by virtue of Section 22 of Payment of Wages Act, 1936, in respect of claims that could be preferred under Section 15 of the Payment of Wages Act and that the two Division Bench decisions of this Court referred to above did not lay down the correct law.”

In *M. Radhakrishna Reddy V. Sri B.V. Bus Service*, 1986

LAB.I.C. 80 the Full Bench of Hon'ble Andhra Pradesh High Court, has

laid down that remedies under section 33-C (2) of the Industrial Disputes Act and section 15 of the Payment of Wages Act are independent and alternative, one does not exclude another. Their Lordships of the Andhra Pradesh High Court have held as under:

“Under the provisions of the Payment of Wages Act every employee has a right to claim and the employer has a corresponding legal duty to pay the wages. The state Government is empowered to appoint an Authority to hear and decide the claims arising out of the deductions from the wages of the delay in payment of wages. Any employee can file an application before the authority for recovery of wages in case of unauthorized deduction or delay in payment of wages. Such application is required to be filed within a period of twelve months from the date on which the deduction was made or from the date on which the payment of wages was due to be made, as the case may be. Thus the section creates a remedy enabling an employee to seek relief in either of those cases within the prescribed period of limitation. Subsequent to this Act, Industrial Disputes Act was enacted in the year 1947 and S. 33C was inserted in the Act in the year 1956 conferring a right on the workmen to approach the Labour Court where he is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. For filing an application under this section no period of limitation is prescribed. Whereas the remedy under S. 15 of the Payment of Wages Act is limited to the claims arising out of deductions from the wages or delay in payment of wages, the remedy under S. 33C(2) of the Industrial Disputes Act embraces any claim relating to money or any benefit, which is capable of being computed in terms of money. Thus the remedy provided under S. 33C(2) is far more wider than the one provided under S. 15(1) of the Payment of Wages Act. Apart from that whereas a period of twelve months limitation is prescribed for filing of an application under S. 15 of the Payment of Wages Act the remedy under S. 33C(2) of the Industrial Disputes Act is not circumscribed by any such

period of limitation. Both the provisions are intended for the benefit of the workmen and both the enactments are welfare legislations. Whereas the Payment of Wages Act regulates the payment of wages, the Industrial Disputes Act deals with the adjudication of industrial disputes and the enforcement of the existing rights of the workmen. Thus both the Acts can be characterised as special enactments each in its own way. The Parliament having been well aware of the provisions of S. 15 of the Payment of Wages Act inserted S. 33C in the Industrial Disputes Act in the year 1956 conferring a right on the workman to prefer a claim for money or money equivalent of a benefit due to him. It was not as if the Parliament was not aware that the same workmen may be governed by the provisions of both the Acts. In such a case, if a workman is governed by the Provisions of both the Acts is it not open to him to pursue that remedy which is more effective and efficacious to him? The two remedies are independent and alternative. One does not exclude the other. In such a situation the principle ‘*generalalia specialibus non derogant*’ will not be applicable as each one of the Acts is a special enactment in its own sphere and one cannot be said to be general in nature vis-à-vis the other.”

The Hon’ble Rajasthan High Court in *Anant Ram Ramdeo v. Asstt. Engineer (REC)*, 1995 LAB. I.C. 764 has reiterated the principles that the Labour Court under section 33-C (2) of the Industrial Court can entertain claims arising out of deduction from wages or delay in payment of wages. The Hon’ble Rajasthan High Court has held as under:

“In *Mandegam Radhakrishna Reddy v. Shri Bharathi Velu Bus Service* (1986 Lab IC 80) (supra) question referred before the Full Bench was that whether the remedy under Section 33- C (2) of the I.D. Act is barred by the provisions of Section 15 of the Payment of Wages Act. The Full Bench has held as under:-

“The remedy provided under S. 33 C (2) of I.D. Act is far wider than the one provided under S. 15 (1) of the Payment of Wages Act. Apart from that whereas a period of twelve months limitation is prescribed for

filing of an application under S. 15 of the Payment of Wages Act the remedy under S. 33 C (2) of the Industrial Disputes Act is not circumscribed by any such period of limitation. Both the provisions are intended for the benefit of the workmen and both the enactments are welfare legislations. Whereas the payment of Wages act regulates the payment of wages, the Industrial Disputes Act deals with the adjudication of industrial disputes and the enforcement of the existing rights of the workmen. Thus both the Acts can be characterized as special enactments each in its own way. The Parliament having been well aware of the provisions of S. 15 of the Payment of Wages Act inserted S. 33 C in the Industrial Disputes Act in the year 1956 conferring a right on the workman to prefer a claim for money or money equivalent of a benefit due to him. It was not as if the Parliament was not aware that the same workmen may be governed by the provisions of both the Acts. The two remedies are independent and alternative. One does not exclude the other. In such a situation the principle “*generalia specialibus non derogant*” will not be applicable as each one of the Acts is a special enactment in its own sphere and one cannot be said to be general in nature vis-à-vis the other.”

The Full Bench has further held:

“When a workman is governed by the provisions of both the Payment of Wages Act as well as Industrial Disputes Act, it is open to him to avail either of the remedies provided under those Acts. A claim barred by time under Section 15 of the Payment of Wages Act can be entertained under S. 33 C (2) of the Industrial Disputes Act.”

In view of the above, it is clear that the Labour Court has got jurisdiction to entertain claims arising out of deductions from wages or delay in payment of wages as the application filed under Section 33 C (2) is not a suit. On the contrary the remedy to recover the amount due under section 33 C is an independent remedy. After insertion 33 C (2) of the Act

w.e.f. 21.8.1984, the Presiding Officer for the reasons to be recorded in writing, may extend such period in the circumstances of the given case. The Labour Court is not barred from entertaining such claims in spite of sections 15 and 22 of the Payment of Wages Act for computation of arrears of wages not paid to the workman by the employer for one reason or the other. Similar view has been expressed by Division Bench of this Court in J.D.A. Jaipur V. Judge, Labour Court (1989) 1 Raj L.W. 392 wherein it has been held that the jurisdiction of Labour Court to entertain an application under Section 33-C (2) of the I.D. Act for payment of wages to a workman is not barred by virtue of the provisions of the Payment of wages Act.”

In view of the pronouncement of law in the above cited cases, it is settled law that the remedies provided under the Payment of Wages Act, 1936 and those provided under section 33 –C(2) of the Industrial Disputes Act, 1947 are independent and alternative and one does not exclude the other. The remedy provided under section 33-C (2) of the Industrial Disputes Act, 1947 is wider in scope and it is always open to the workmen to avail either the remedy under the Payment of Wages Act, 1936 or under the provisions of the Industrial Disputes Act, 1947.

The second contention of Mr. Neel Kamal Sood is that the principal employer was not liable to pay the wages of workmen when it was the respondent No.16 who was liable to pay the wages of the workmen. The learned Labour Court after extensively quoting the various provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has held that the petitioners-corporation was liable to pay the wages if any default was made by the contractor, but the same could be recovered by the Corporation from the contractor subsequently. It will be apt to reproduce

section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 as under:

“21. Responsibility for payment of wages. – (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

It is evident from para 30 of the agreement that the contractor/labour supply mate has to obtain licence under the Contract Labour (Regulation and Abolition) Act, 1970 and H.P. Contract Labour (Regulation and Abolition) Rules, 1974 and the same have to be complied with in letter and spirit. It is also evident from the agreement entered into between the petitioners-corporation and respondent No.16 that the petitioners-corporation was to supervise the work of respondent No.16. Mr. P.C. Kaushal while appearing as RW-1 before the Labour Court has admitted in his cross-examination that though the work was being done by respondent No.16 but under the overall supervision of petitioners-corporation. Four workmen, i.e. Kusal Singh, Ganga Ram, Om Prakash

and Gopal have appeared before the Labour Court as PW-1 to PW-4 and had stated therein that they have worked for the period 3.11.1996 to 30.1.1997, but have not been paid wages by the petitioners-corporation or by the respondent No.16. Since the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 were applicable to the petitioners-corporation as is evident from para 30 of the agreement, it cannot wriggle out of its responsibility to pay the wages of the workmen in the eventuality of the same being not paid by respondent No.16.

It is held in **Uttranchal Jal Vidyut Nigam Ltd. V. P.O. Labour Court, Dehradun and others** 2004 (III) LLJ 533 that the principal employer is liable to make payment to workmen if contractor had failed to make the same. The Hon'ble Single Judge has held as under:

“The short question for consideration before this Court is whether the award/orders in question passed by the Labour Court are bad in law as against the petitioner.

The first submission made by the learned counsel for the petitioner is that the relationship of employer and employee does not exist between the petitioner and respondent No.3 to 21, as such the proceedings before the Labour Court are bad in law. It is admitted to the petitioner that he had a contract with the Bhuppurva Sainik Kalyan Nigam who provided the workmen to the petitioner. In view of the provisions of Section 21(4) of Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is liable to make the payment to the workers if the contractor failed to make the payment, and he can recover the amount from the contractor. That being so position of law, the impugned order dated May 21, 2001 and June 22, 2001 cannot be said to be against the law on this ground.

Second argument advanced on behalf of the petitioner is that Section 33-C (2) of Industrial Disputes Act, 1947 gets attracted only when there is entitlement of payment to the workers. In reply to this learned counsel for the respondents No.3 to 21 submitted that the petitioners have not challenged

this fact, rather it is admitted that work was taken from the respondents No.3 to 21. As such entitlement to salary cannot be questioned. I am in agreement with submission made on behalf of the respondents as factually it is incorrect to say that there was no entitlement.”

The Hon’ble Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport Association and others** AIR 1988 Supreme Court 2168 has held that the interference in the awards passed by the Industrial Tribunals by the High Courts should not be on hyper-technical grounds. Their Lordships have opined as under:-

“The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.”

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. The Hon’ble Supreme Court has also

held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another** (2000) 4 SCC 245 that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence or if another view is possible there is no ground to interfere with the findings of the Industrial Tribunal. Their Lordships have opined as under:-

“The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.”

The Hon'ble Supreme Court has again considered this aspect in **Sugarbai M. Siddiq and Others versus Ramesh S. Hankare (dead) by LRs.** (2001) 8 SCC 477 and has held that scope of powers of High Court is concerned not with the decision of the lower court/Tribunal,

but with its decision making process. The High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, and then only High Court can interfere with otherwise not. Their Lordships have held as under:-

“There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the mater and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside.”

The workmen though had been engaged by respondent No.16, but principal employer was the Forest Corporation and is thus liable to pay the wages to the workmen as ordered by the Labour Court in its award date 16.1.2002. It is evident from Annexure P-2 that the workmen have only claimed a sum of Rs. 15,927.50 paisa. The amount as claimed by the workmen i.e. respondents No.1 to 15 was meagre and the filing of the writ petition before this Court assailing the award directing the payment of a sum of Rs. 15,927.50 paisa was misconceived. There was no question of law involved requiring adjudication by this court and this petition has been filed in a routine manner without realizing that the workmen have been deprived of even a meager sum of Rs. 15,927.50 paisa. The Forest Corporation is a State within the meaning of Article 12 of the Constitution of India and should have avoided filing this petition. The Corporation should file the petitions where substantial question of law is involved or the stakes are high. In the present case, the total amount to be paid to the

workmen is Rs. 15,927.50 paisa. Thus, this court is of the opinion that it is a fit case where exemplary costs should be imposed personally on the Managing Director of the Forest Corporation.

The upshot of the above discussion is that principal employer i.e. petitioner-corporation is bound to pay the wages to the workmen under section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 and thereafter it can recover the same from the respondent No.16. The workmen have the option either to approach the authorities appointed under the Payment of Wages Act, 1936 or Labour Court under section 33-C (2) of the Industrial Disputes Act, 1947.

This Court on 7.5.2007 directed the petitioner-corporation to apprise this court whether the corporation had withheld any amount of the respondent No.16 or not. Mr. Neel Kamal Sood, Advocate during the course of hearing produced the photocopy of the FDR No.513104 amounting to Rs. 81,217/- (Rs. Eighty one thousand two hundred seventeen only) dated 29.3.2005 deposited by the respondent No.16 with the petitioner- corporation by way of earnest money. The photocopy of the same is taken on record.

Accordingly the writ petition is dismissed with costs which are quantified at Rs. 7,000/- to be recovered from the Managing Director of the petitioner-corporation. The award dated 16.1.2002 is upheld. The amount deposited in the Registry of this Court is directed to be released in favour of the workmen forthwith.

(Rajiv Sharma), Judge

May 14, 2007
Awasthi